



DEPARTMENT: NC DHHS Privacy and Security Office	POLICY NAME: Minimum Necessary, Use, and Disclosure Policy
PAGE: 1 of 5	REPLACES POLICY DATED: 2/1/16
EFFECTIVE DATE: 03/25/19, 2/1/16, 11/15/15, 3/30/05	ORIGINAL EFFECTIVE DATE: 04/14/03
REVISED DATE: 10/9/03, 11/15/15, 1/7/19	APPROVED DATE: 03/22/19
APPROVED BY: Pyreddy Reddy, CISO; Sam Gibbs, Deputy Secretary IT Operations	

SCOPE: This policy applies to all NC DHHS workforce members including, but not limited to employees, trainees, and volunteers. The minimum necessary policy is intended to ensure NC DHHS Divisions and Offices evaluate current procedures and enhance privacy protections needed to limit unnecessary or inappropriate access to and disclosures of confidential data including Protected Health Information (PHI), personally identifiable information (PII), and Individual Identifiable Health Information (IIHI).

DEFINITIONS:

Workforce Member - Employees, volunteers, trainees, and other persons who conduct performance of work for a covered entity regardless if they are paid or not paid by the covered entity.

Protected Health Information (PHI)- Any individually identifiable health information, including genetic information and demographic information, collected from an individual that is created or received by a covered entity.

Personally Identifiable Information (PII) - Information which can be used to distinguish or trace an individual's identity alone (name, social security number, biometric records, etc.) or when combined with other personal or identifying information which is linked or linkable to a specific individual.

PURPOSE:

To provide guidance regarding each DHHS workforce member's responsibility related to using and disclosing only the minimum amount of individual identifiable health information (IIHI) and personally identifiable information (PII) to fulfill the purpose of the use or disclosure, regardless of the extent of access provided. This policy covers uses and disclosures of confidential data including PHI and PII in any form including oral, written and/or electronic media. Each workforce member is responsible for adhering to this policy by using only the minimum information necessary to perform his or her responsibilities, regardless of the extent of access provided or available.

To establish the requirements for all NC DHHS workforce and to protect privacy rights for PHI and PII as required by the Health Insurance Portability and Accountability Act (HIPAA), Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 and all federal regulations. NC DHHS workforce must rely heavily on the development and implementation of policies and procedures. Therefore, this policy takes on special importance for DHHS



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divisions/offices maintaining confidential data, PHI, PII, and IIHI via the following methods: paper medical records, paper client records, diagnostic images, and electronic health records. NC DHHS divisions/offices must evaluate current practices for using and disclosing confidential data including PHI and individually identifiable health information to enhance protections, as needed, to limit unnecessary, or inappropriate access.

POLICY: Only NC DHHS workforce members with a legitimate “need to know” may access, use, or disclose confidential data or PHI. All NC DHHS divisions/offices must make reasonable efforts to limit PHI, IIHI, and PII to that which is minimally necessary to accomplish the intended purpose for the use, disclosure, or request for information. This includes all activities related to treatment, payment, and health care operations (TPO). Each workforce member may only access, use, or disclose the minimum information necessary to perform his or her designated role regardless of the extent of access provided to him or her.

Minimum Necessary within NC DHHS

NC DHHS Divisions and Offices are required to identify persons in its workforce who need access to confidential data including PHI and the categories of information to which access is needed. NC DHHS Divisions and Offices must develop and implement procedures that limit routine disclosures of PHI, PII, and IIHI to the amount reasonably necessary to achieve the purpose of the disclosure. In addition, DHHS divisions/offices are required to develop criteria designed to limit PHI and PII to the minimum necessary standard.

Minimum Necessary Outside NC DHHS

NC DHHS workforce members may rely on a request for disclosure as being limited to confidential data (PII and PHI) that is minimally necessary, if:

- Disclosure is to a public official who represents that the request is for the minimum necessary information;
- The request is from another HIPAA covered health care component;
- The request is from a professional in the agency's own workforce or from a business associate, and the professional represents that the request is for the minimum necessary information; or



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- The requestor provides documentation that the disclosure is for research purposes.

The minimum necessary requirement **does not** apply to the following:

- Requests by another HIPAA covered healthcare component;
- Uses or disclosures made to the individual who is the subject of the PHI;
- Uses or disclosures made pursuant to a HIPAA compliant authorization;
- Disclosures to the Secretary of the Department of Health and Human Services (DHHS) when required by the Secretary to investigate or determine the facility's compliance with the HIPAA Privacy Standards;
- Uses and disclosures required by law as described in §164.512(a); and limited data sets and de-identified information.

PROCEDURE:

1. Workforce members acting on behalf of NC DHHS must always use only the minimum amount of information necessary to accomplish the intended purpose of the access, use, and/or disclosure of PHI.
2. With respect to system access, minimum necessary will be supported through authorization, access, and audit controls (*e.g.*, roles-based access) and should be implemented for all systems that contain confidential data including protected health information (PHI). Within the permitted access, an individual system user is only to access what they need to perform his or her job functions.
3. Each NC DHHS division/office must identify workforce members or classes of workforce members who need access to PHI and PII to carry out their job functions.
4. For all workforce members, the category or categories of confidential data or PHI to which access is needed and any conditions appropriate to such access. Reasonable efforts must be made to limit the access of the workforce member or classes of workforce members to the category or categories of PHI and PHI to which access is needed.
5. Consistent with the NC DHHS Administrative Privacy Official policy, the designated Privacy Officials are responsible for facilitating compliance with these privacy protection principles.



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6. NC DHHS workforce may rely on a requested disclosure as being the minimum necessary when:

- a. Making disclosures to public officials as permitted in §164.512 if the public official represents the information requested as the minimum necessary;
- b. The information requested is requested by a professional who is a member of the DHHS workforce or is a business associate of NC DHHS divisions for providing professional services to the facility, and the professional represents the information requested as the minimum necessary; and
- c. Documentation or representations that comply with the applicable requirements of §164.512(i) have been provided by a person requesting the information for research purposes.

The following protocols follow the HIPAA Privacy Rule and should be considered when staff share confidential data including PHI in the performance of their job responsibilities and when sharing of PHI, PII, and IIHI with individuals outside the agency.

When using confidential data and PHI within the agency, NC DHHS divisions/offices must categorize users by their "need-to-know" to accomplish their job responsibilities and establish standard protocol (criteria) that reasonably limits inappropriate access to PII and PHI based on the following categories:

- Identify the persons or groups of persons who need access to individually identifiable health information to carry out their job functions;
- Identify the type of individually identifiable health information to which each person or group needs access, as well as the conditions under which they need the access; and
- Make reasonable efforts to limit the access of its staff to only the information appropriate to their job functions. Standard protocol for disclosures of PHI, PII, and IIHI by an agency's own workforce.

For routine recurring disclosures of PHI and PII by DHHS workforce members, standard protocol must:

- Identify the types of information to be disclosed;



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- Identify the types of persons who would receive such information;
 - Identify the conditions that would apply to such access; and
 - Develop reasonable criteria for disclosures to routinely hired types of business associates (medical transcription, release of information (ROI) vendor, e.g.).
7. For disclosures and requests made on a **non-routine basis**, criteria must be developed and maintained to limit PHI to the information reasonably necessary to accomplish the purpose of the disclosure and each request must be reviewed on an individual basis in accordance with such criteria.
8. For disclosures and requests made on a **routine and recurring basis**, the facility must create, implement, and maintain policies and procedures or standard protocols that limit the PHI to the amount reasonably necessary to achieve the purpose of the disclosure.
9. For **all other requests** for PHI or PII by an agency's own workforce, standard protocol must ensure that each request is reviewed by a NC DHHS Division and Office Privacy Official who has authority to determine that the information requested is limited to what is reasonably necessary to accomplish the purpose of the request.
10. Individuals or entities external to the department that perform activities or functions on behalf of a DHHS covered health care component as defined by the HIPAA Privacy Rule, are considered **External Business Associates** of a NC DHHS agency. As such, External Business Associates are required to comply with the Minimum Necessary requirement as specified in the HIPAA Privacy Rule.

REFERENCES:

- Health Insurance Portability and Accountability Act (HIPAA), Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164
- Privacy Official Policy: Administrative Privacy Official Policy